IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

INCOME TAX REFERENCE NO. 169 of 1993

The Commissioner of Income Tax ... Applicant.

vs.

Shri Motilal Kapurchand Kotecha Bhusaval ..... Respondent

Mr. Ashok Kotangale, Sr. Counsel
with D.A. Dubey i/b. S. Bhattacharya for Applicant.

CORAM: V**.C. DAGA AND A.S. AGUIAR JJ.**

Date:19th July, 2005.

P. C.:

1. By this reference under section 256 (1) of the Income Tax Act , 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this court:

> "Whether on the facts and circumstances of the case, the Tribunal is right in allowing the investment allowance even though the conditions laid down in section 32-A of the Income-tax Act, 1961 have not been fulfilled ?"

2. Having heard learned counsel for the revenue it is not in dispute that the Respondent – assessee, is a contractor firm and also

engaged in the business of manufacture of spun pipes. The assessee is also registered as a Small Scale Industry under the Small Scale Industries Act. The assessee has thus claimed investment allowance under section 32 -A of the Income Tax Act . The same was allowed by the Commissioner of Income Tax (Appeals) as well as Tribunal. The finding of fact recorded by the Tribunal is that the assessee is engaged in the business of manufacturing spun pipes and the same were used for executing water supply scheme.

3. We are satisfied that this is a case wherein the Respondent – assessee complies with the conditions laid down under section 32-A of the Income Tax Act . The Tribunal was not justified in permitting the question pregnant with the meaning that the assessee does not comply with the provisions of section 32A of the Act. As a matter of fact the assessee complies with the provisions of section 32-A.

4. In this view of the matter the Tribunal had rightly allowed the investment allowance. Accordingly the aforesaid question is answered in the affirmative i.e., in favour of the assessee.

Reference stands disposed of with no order as to costs.

(V. C. DAGA J.)

(A. S. AGUIAR J.)